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CITATIONS

645537—45

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1172

JAMES J. LAUGHLIN, PETITIONER

v.

CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions in the court of appeals (R. 24–34) are reported at 145 F. 2d 700.

JURISDICTION

The judgment of the court of appeals was entered November 13, 1944, and a petition for rehearing was denied December 5, 1944 (R. 35). On March 3, 1945, petitioner's time for filing a petition for a writ of certiorari was extended to April 2, 1945, and was again extended to April 17, 1945, by orders of the Chief Justice (R. 41). The petition for a writ of certiorari was filed April 17, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether petitioner is entitled to a writ of mandamus directing the vacation of the order of the presiding justice of the district court excluding him from further participation in the sedition trial.

STATEMENT

In August 1944, petitioner applied to the United States Court of Appeals for the District of Columbia for a writ of mandamus to the late Chief Justice Eicher of the District Court for the District of Columbia directing vacation of the Chief Justice's order excluding petitioner from further participation in the trial of the case of *United States* v. *McWilliams*, commonly called the sedition case, which was then in progress before him (R. 1–13). Petitioner, an attorney, alleged that from April 17 to July 5, 1944, he had represented Robert Noble and Edward James Smythe, two of the defendants on trial in that case; that on July 5, a proceeding was had outside the presence of the jury at which Chief Justice Eicher referred to a petition for his impeachment which petitioner had filed with the Speaker of the House of Representatives and called upon petitioner to show cause why he should not be dismissed from further participation in the case; that after hearing petitioner, the Chief Justice ordered that petitioner be dismissed as attorney of record for the two defendants whom he represented, and as attorney for any of the other defendants for whom he had appeared as associate counsel; and that he be "denied further participation in this case or in the

trial of it" (R. 1–4). The Chief Justice, in answer to the petition, alleged that petitioner's conduct had been "continuously contemptuous, obstructive, and disrespectful to the court since the commencement of the trial;" that both in and out of the court room petitioner had attempted to intimidate and coerce the court by harassing and embarrassing respondent as trial judge in the performance of his duties by various devices, including the filing of numerous irrelevant motions of a highly sensational nature, the bringing of unwarranted civil suits against respondent, and the announcement in open court that he had filed a petition for the impeachment of respondent; that prior to his expulsion petitioner had twice been adjudged guilty of contempt for his conduct during the course of the trial; and that the order excluding petitioner from further participation in the trial was merely an exercise of the inherent power of the court to prevent and remove obstructions to the administration of justice (R. 15–17). The Chief Justice also asserted that of the two defendants represented by petitioner on July 5, one had expressed his satisfaction with the substituted attorney appointed for him, and the other had been severed from the trial (R. 15). On November 13, 1944, the Court of Appeals for the District of Columbia granted petitioner leave to file his petition for mandamus but denied the petition (R. 35), two Justices dissenting (R. 28–34)[1]

[1] By an equal division of its then sitting members the Court of Appeals had previously denied a similar petition filed by petitioner (R. 26).

On November 30, 1944, Chief Justice Eicher died, and on December 7, 1944, a mistrial was declared in the sedition case (R. 38). Petitioner subsequently moved to substitute as parties respondent in place of the late Chief Justice, the present Chief Justice and the Associate Justices of the District Court for the District of Columbia. He alleged in this motion that, after the mistrial had been declared, Justice Goldsborough had ruled that Chief Justice Eicher's order was effective to bar petitioner from any further participation in the sedition case (R. 39). The motion to substitute was granted on April 6, 1945 (R. 40).

ARGUMENT

The writ of mandamus is an extraordinary remedy awarded in the exercise of a sound judicial discretion only in cases where the petitioner's right to demand performance of a given act and the respondent's duty to perform are clearly established. *Ex parte Cutting*, 94 U. S. 14, 20; *International Contracting Co.* v. *Lamont*, 155 U. S. 303, 308; *United States* v. *Wilbur*, 283 U. S. 414, 420; *I. C. C.* v. *New York, N. H. & H. R. Co.*, 287 U. S. 178, 203. Petitioner presents no facts which show such a clear-cut right to performance owing to him. His right to appear as counsel in the sedition case was and is, of course, a derivative one, dependent on the desire of a defendant that petitioner represent him. It would appear, therefore, that the parties aggrieved by the exclusion of petitioner were the defendants who had engaged him, and not petitioner himself. Even at the time the decision be-

low was rendered, the dissenting opinion recognized that "It may well be that in the lapse of time since the filing of the original petition conditions and circumstances have arisen which would make useless present granting of the relief sought" (R. 28–29).[2] At the present time, petitioner's interest is even more speculative.[3] A mistrial has been declared because of Chief Justice Eicher's death. There has been no determination as to which of the defendants will be included in the event of a retrial. It is not certain that any of the defendants, if retried, will wish to engage petitioner's services. Hence, even though Justice Goldsborough has ruled that petitioner is barred from further participation in the sedition case (see *supra*, p. 4), petitioner has no such direct and immediate interest in future proceedings in the case as would entitle him to the relief he seeks.

Apart from these considerations, petitioner's application to the Court of Appeals failed to allege facts which would have warranted the issuance of the extraordinary writ of mandamus. As all of the judges in the court below agreed (R. 27, 31), a district judge has power, in the interests of maintaining a fair and orderly trial, to exclude an attorney from participation in a particular case. *Viereck* v. *United*

[2] Of petitioner's two clients, one had then accepted other counsel and the other had been severed from the case (see *supra*, p. 3).

[3] Petitioner's application must be considered in the light of the facts as they now exist rather than the state of facts presented at the time the petition was filed. *Northern Pacific Railroad* v. *Dustin*, 142 U. S. 492, 508; see *International Contracting Co.* v. *Lamont*, 155 U. S. 303, 309.

States, 130 F. 2d 945, 962 (App. D. C.), reversed on other grounds, 318 U. S. 236; *Brown* v. *Miller*, 286 Fed. 994, 997 (App. D. C.); *Kelley* v. *Boettcher*, 82 Fed. 794 (C. C. A. 8). We submit that the order here sought to be reviewed represented an exercise of that power. The dissenting judges below, who thought that the exclusion order was merely a punishment visited upon petitioner because of contumacious conduct outside the presence of the court, treated the order as based solely on the petition for impeachment, unrelated to petitioner's whole course of conduct during the trial (R. 32–33). We believe, as did the majority below (R. 28), that the petition for impeachment cannot be thus isolated. The events immediately prior to the proceeding which resulted in the exclusion order are set forth in full in the majority opinion below (R. 24–26). Petitioner's prior conduct during the course of the trial, the fact that he had already twice been adjudicated in contempt of court were, of course, well known to both petitioner and Chief Justice Eicher and were inevitably before the court at the time the exclusion order was made. The nature of petitioner's earlier contumacious and disruptive conduct which led to his second conviction for contempt after a trial before Associate Justice Bailey is detailed in the recent opinion of the Court of Appeals affirming that conviction. *Laughlin* v. *United States*, decided April 30, 1945. In a supplementary opinion filed May 8, 1945, denying petitioner's application for rehearing, the court reiterated that petitioner's contempts "ob-

structed the orderly administration of justice" and said that his conduct was part of his "plan to disrupt the trial."

It is thus evident, as appears from the response filed on behalf of Chief Justice Eicher (see *supra*, p. 3), that the petition for impeachment was the precipitating factor rather than the sole cause of petitioner's exclusion. Hence, the Chief Justice's determination that, in the light of the whole course of petitioner's conduct, his exclusion was necessary to insure the orderly processes of justice involved the exercise of his discretion in respect of a matter within his jurisdiction. Since it is well established that mandamus does not lie to review the decisions of officials in matters within their discretion, the Court of Appeals properly declined to issue the writ. *Adams* v. *Nagle*, 303 U. S. 532, 542; *Wilbur* v. *United States*, 281 U. S. 206; *Alaska Smokeless Coal Company* v. *Lane*, 250 U. S. 549, 555.[4]

[4] The majority below were also of the opinion that petitioner's attack on Chief Justice Eicher, embodied in the impeachment petition, "in itself, made it so improper for petitioner to remain in the trial that it would have justified his dismissal" (R. 28). Although we do not believe it necessary to consider the expulsion order as based on the impeachment petition alone, we submit that the opinion is likewise correct in this aspect. The petition for impeachment was predicated solely on criticism of the conduct of the Chief Justice during the trial then in progress (R. 10–13) and obviously had for its object his removal before conclusion of the trial. Hence petitioner was, in a very direct way, endeavoring to obstruct and impede the orderly progress of the pending trial. Moreover, as the majority below pointed out, petitioner had by this conduct brought about a situation

CONCLUSION

For the reasons stated we respectfully submit that the petition for a writ of certiorari should be denied.

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MAY 1945.

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where it was improper for him further to remain in the trial and where his continued participation would be "useful neither to his client nor to the court and would seriously embarrass counsel, court, and defendants" (R. 27).

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